

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

**DEFENDANTS' EXPEDITED MOTION TO STRIKE FIRST AMENDED COMPLAINT  
AND FOR AN EXTENSION OF TIME TO FILE  
"ADDITIONAL MEMORANDA IN RESPONSE"**

The Defendants, the Virginia Department of Alcoholic Beverage Control, Shawn Walker, John Cielakie, Thomas Custer, and Jared Miller, by counsel, and pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, hereby move to strike the plaintiff's First Amended Complaint and also seek an extension. In sum, the First Amended Complaint vastly exceeds the scope of the limited leave this Court granted the plaintiff to amend his original Complaint, changing the substance of this action and prejudicing the Defendants in their defense. The Defendants set forth the bases for these requests more fully in their accompanying Memorandum in Support, filed contemporaneously herewith.

Wherefore, this Court should grant the Defendants' Expedited Motion to Strike the First Amended Complaint and for an Extension of Time to File "Additional Memoranda in Response" and strike the First Amended Complaint in its entirety. Additionally, as set forth in Section III of the accompanying Memorandum in Support, this Court should grant the Defendants the following additional relief, which is warranted under the circumstances:

- That the plaintiff must file within five (5) days of an Order granting the instant motion a First Amended Complaint in conformity with this Court’s January 20-21, 2016, rulings and intentions;
- That the First Amended Complaint may be amended only to change the style of Count IV from a simple negligence claim to a gross negligence claim;
- That the Defendants may file any “additional memoranda in response,” as originally permitted by this Court’s January 21, 2016, Order, within twenty (20) days of the plaintiff’s filing of a conforming First Amended Complaint;
- That the Court thereafter grant the Defendants’ pending Motion to Dismiss for the reasons set forth on brief and at oral argument; and
- That the parties may seek oral argument, as originally permitted in this Court’s January 21, 2016, Order.

Should this Court be inclined to deny the instant motion, the Defendants request an additional twenty (20) days from the Order of denial to file “additional memoranda in response” to the First Amended Complaint. Under the circumstances, good cause exists for an extension. Given the expediency involved by the upcoming deadlines, the Defendants submit the instant motion on the papers and do not seek oral argument unless the Court requests otherwise.

**Respectfully submitted,**

**VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, SHAWN WALKER, JOHN CIELAKIE, THOMAS CUSTER, and JARED MILLER**

By /s/ Nicholas F. Simopoulos  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of February, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record for the plaintiff.

By /s/ Nicholas F. Simopoulos  
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